IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 320 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHIRUBHAI SHUKKARBHAI RATHOD

Versus

STATE OF GUJ.

Appearance:

MR KR RAVAL for Petitioner

MR MA BUKHARI, APP, for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT
and
MR.JUSTICE A.L.DAVE

Date of decision: 07/11/2000

ORAL JUDGEMENT

(Per : MISS JUSTICE R.M.DOSHIT)

1. This appeal has been preferred against the judgment and order dated the 9th March, 1990, passed by the learned Sessions Judge, Surat, in Sessions Case No.150 of 1989, recording conviction of the accused-appellant and imposing sentence of rigorous imprisonment for life and fine of Rs.100/- and a sentence of rigorous imprisonment for one week in default of payment of fine.

2. The appeal arises of an incident which occurred on the 19th June, 1989. On the 19th June, 1989, at around 7 'o clock in the evening, the deceased-Bai Savita was reported to have received burn injuries. On such report having been received by the Police Station Officer, one Murlidhar Dagadu (P.W.6), he instructed Head Constable-Rajendra Bhavsar (P.W.7) to visit the spot of incidence. On his reaching the spot of incidence, Rajendra Bhavsar (P.W. 7) inquired of the injured Savita, how she had received burn injuries. Upon inquiry made by him about the incident, the injured Bai Savita, who was then conscious, informed the Police Officer that her husband Dhirubhai Sukkarbhai, the accused, had poured kerosene over her and alighted her clothes. Thereafter, she was taken to the Civil Hospital, at Surat. Upon her admission to the hospital at around 11.40 P.M., the Medical Officer in-charge, Dr. Ajaybhai Sheth (P.W.10) inquired of her how did she happen to receive burn injuries. She informed that her husband-Dhirubhai had poured kerosene over her and alighted her clothes. After admitting the injured Savitaben and having given her treatment, the complaint (Ex.20) was recorded by the Police Sub-Inspector N.B. Barot (P.W.8). Even before Shri Barot (P.W.8), the injured-Savitaben stated that her husband-Dhirubhai had poured kerosene over her and alighted her clothes. After recording the complaint, since the injured was severely burnt, her thumb impression was taken on the complaint, which was endorsed by one Raju, who was present in the Ward being relative of some other patient, who was admitted in the same Ward. Having recorded the complaint, the Police Sub-Inspector sent a Yadi (Ex.26) to the Executive Magistrate at around 1.00 A.M., in the wee hours of the 20th June, 1989. The said Yadi was endorsed by the Medical Officer (P.W. 10) to the effect that the injured was conscious. Pursuant to the said Yadi, the Executive Magistrate, one Rameshchandra Joshi (P.W.9), recorded a dying declaration of the injured-Savitaben at 1.30 A.M. The said dying declaration (Ex.27) was recorded between 1.30 A.M. and 1.50 A.M. Since then, the Executive Magistrate (P.W.9) appears to have obtained a certificate from the Medical Officer (P.W.10) with respect to the state of mind of the

injured-Savitaben at 1.30 P.M., i.e. in the afternoon of the 20th June, 1989. The injured-Savitaben died on 21st June, 1989 on account of burn injuries sustained by her. Pursuant to her death, an offence under Section 302 was registered against the accused-appellant. The accused was tried by the learned Sessions Judge in above referred Sessions Case No.150 of 1989. The charge was held to have been proved and the accused was convicted for offence punishable under Section 302, I.P.C. After hearing the accused, the accused was sentenced to suffer rigorous imprisonment for life and fine as recorded hereinabove. Feeling aggrieved, the accused has preferred the present appeal.

3. Mr. Raval has submitted that the entire case against the accused has been concocted. He has submitted that the Executive Magistrate (P.W.9), when he recorded the dying declaration at around 1.30 after midnight, has recorded that both the hands of the injured were completely bandaged and it was not possible to take her thumb impression. However though, the Police Sub-Inspector who recorded the complaint has taken thumb impression of the injured Savitaben. If the hands of the injured-Savitaben were completely bandaged, he could not have taken the thumb impression and the complaint is, therefore, false and concocted. He has also submitted that the Yadi (Ex.26) has been endorsed by the Medical Officer (P.W.10) at 12.00 midnight stating that injured-Savitaben was conscious. Another certificate (Ex.29) by the Medical Officer (P.W.10) was given at 1.30 P.M. on 20th June, 1989, which certifies that the injured-Savitaben was conscious and fit for giving dying declaration. Neither of these certificates states whether at 1.30 after midnight, the time at which the dying declaration was recorded, she was conscious or not or whether she was in a fit state of mind or not. He has submitted that it was imperative for the Executive Magistrate to first obtain the opinion of the Medical Officer whether the injured-Savitaben was conscious and whether she was in a fit state of mind or not. In absence of such certificate given by the Medical Officer, it cannot be believed that, at the relevant time, the injured-Savitaben was conscious or that she was in a fit state of mind. The Executive Magistrate could not have ascertained and formed an opinion of his own whether the injured-Savitaben was conscious and was in a fit state of mind to give a statement before the Magistrate. The conviction having been solely based on the dying declaration, the same is not sustainable and requires to be quashed and set aside. In support of his argument, he has relied upon the judgment of the Honourable Supreme

Court in the matter of Paparambaka Rosamma & Ors. v. State of Andhra Pradesh, Judgment Today 1999 (6) SC 585.

4. The learned Additional Public Prosecutor, Mr. Bukhari, has submitted that the dying declaration recorded by the Executive Magistrate (Ex.27) is not the only piece of evidence on which the conviction is based. Apart from the said dying declaration, there are three other dying declarations recorded at various stages and all are consistent. It should, therefore, be safe to base conviction on the aforesaid dying declarations. Besides, the presence of the accused at the place of incidence is also established since he too received some burn injuries on his hands. He has, therefore, relied upon the judgment of the Honourable Supreme Court in the matter of State of U.P. v. Ameer Ali, [1996 SCC (Criminal) 686].

5. Upon examination of the records, we find that deceased-Savitaben, after receiving burn injuries, had given four dying declarations, all of which are consistent. The first declaration was made by her before the Head Constable-Rajendra Bhavsar (P.W.7) on the spot of incidence. The second declaration was made by her before the Medical Officer, Dr. Ajaybhai Sheth (P.W.10) while she was admitted to the Civil Hospital, at Surat. The third declaration was made by her before the Police Sub-Inspector N.B. Barot (P.W.8), who recorded the complaint and the fourth declaration was made by her before the Executive Magistrate, as discussed hereinabove. It is true that the said dying declaration (Ex.27) was recorded by the Executive Magistrate during 1.30 A.M. and 1.50 A.M. on the 20th June, 1989 and no certificate from the doctor was obtained by him at the time of recording of the dying declaration. Nonetheless, the Medical Officer did certify at 12.00 midnight that the injured-Savitaben was conscious. Besides, in his certificate (Ex.29) also, he has stated that the injured-Savitaben was, at the relevant time, conscious and in a fit state of mind for giving dying declaration. In his deposition, the Medical Officer has, in no uncertain terms, stated that during the entire period from the moment injured-Savitaben was admitted to hospital and till the certificate (Ex.29) was given by him, the injured-Savitaben was conscious and was in a fit state of mind to give her statement. Considering the totality of the evidence before us, we are of the view that irrespective of the dying declaration (Ex.27) recorded by the Executive Magistrate, the conviction can safely be based on the other three dying declarations which are consistent with each other and also with the

one at Ex.27.

5.1 In the matter of Paparambaka Rosamma & Ors.(supra), the conviction was based on a singular dying declaration alone. The Honourable Supreme Court, on facts, found that what was ascertained was the consciousness of the injured victim and not whether she was in a fit state of mind. The Court noticed that the injured had not eaten anything for several days before the date of incident. She also said that, not only the accused but she too poured kerosene over herself, i.e. her statement was found to be incoherent. Even the doctor had certified that the injured was conscious, but she did not depose that the injured was also in a fit state of mind to make a statement. It was the Executive Magistrate himself who formed an opinion that he was satisfied that the injured was in a fit deposing state of mind to make a declaration. The Court also found some more infirmities in the dying declaration and held that the statements made in dying declaration were not sufficient to substantiate the prosecution case and no conviction could have been based on such statements alone. In the matter of Ameer Ali (supra), there were more than one dying declaration attributing the overtact to the accused. In the circumstances, the Honourable Supreme Court held that "The High Court, therefore, was wholly unjustified in doubting the correctness of the declaration recorded by the Magistrate. No reasons have been given to disbelieve the dying declaration recorded by the Magistrate. Even with regard to the dying declaration by the investigating officer, we do not find any reason to discard it. No doubt, as stated, the witnesses had come subsequent to recording of the statement of the deceased by the investigating officer but that does not mean that the investigating officer had fabricated the statement. As seen, the statement given to the Executive Magistrate is quite clear and is a categorical statement. It gets corroboration, if at all it is needed, from the subsequent dying declaration recorded by the investigating officer. It is settled law that a dying declaration, if found truthful, is sufficient to base a conviction without any further corroboration." On the facts of the present case also, as recorded hereinabove, deceased-Savitaben had given four consecutive dying declarations which were all coherent and consistent with each other. There is no reason why these dying declarations should not be believed. The conviction based on the said dying declarations is wholly justified and we see no case for interference.

6. The appeal is dismissed.

[MISS R.M. DOSHIT, J.]

[A.L. DAVE, J.]

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